

AMENDED IN ASSEMBLY AUGUST 21, 2006

AMENDED IN ASSEMBLY AUGUST 7, 2006

AMENDED IN ASSEMBLY JULY 7, 2005

AMENDED IN SENATE MAY 27, 2005

AMENDED IN SENATE APRIL 4, 2005

SENATE BILL

No. 171

Introduced by Senator Alquist

(Coauthors: Assembly Members Cohn and Dymally)

February 9, 2005

An act to add Section 859.5 to the Penal Code, relating to criminal procedure.

LEGISLATIVE COUNSEL'S DIGEST

SB 171, as amended, Alquist. Interrogation: recording.

Existing law provides that under specified conditions the statements of witnesses, victims, or perpetrators of specified crimes may be recorded and preserved by means of videotape.

This bill would ~~enact the Truth in Prosecution Act of 2005, which would~~ provide that (1) except as specified, any custodial interrogation conducted at a place of detention of an individual suspected of committing or accused of a homicide or a ~~serious~~ *violent* felony, as defined, shall be electronically recorded, as specified; (2) the ~~state~~ *interrogating entity* shall not destroy or alter the electronic recording of a custodial interrogation, except as specified; and (3) if a court finds that a defendant was subjected to an unlawful custodial interrogation, the court shall, at the request of the defendant, provide the jury with ~~a cautionary~~ *an* instruction, developed by the Judicial

Council, as specified. By imposing these new requirements on local law enforcement when they are interrogating a defendant suspected of committing or accused of a homicide or ~~serious~~ *violent* felony, this bill would impose a state-mandated local program upon local government.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that, if the Commission on State Mandates determines that the bill contains costs mandated by the state, reimbursement for those costs shall be made pursuant to these statutory provisions.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: yes.

The people of the State of California do enact as follows:

1 SECTION 1. It is the intent of the Legislature in enacting this
2 act to require the creation of an electronic record of an entire
3 custodial interrogation in order to eliminate disputes in court as
4 to what actually occurred during the interrogation, thereby
5 improving prosecution of the guilty while affording protection to
6 the innocent.

7 ~~SEC. 2. This act shall be known and may be cited as the~~
8 ~~Truth in Prosecution Act of 2005.~~

9 ~~SEC. 3.~~

10 SEC. 2. Section 859.5 is added to the Penal Code, to read:

11 859.5. (a) (1) Any custodial interrogation of an individual
12 suspected of committing or accused of a homicide, as defined in
13 Chapter 1 (commencing with Section 187) of Title 8 of Part 1, or
14 a ~~serious~~ *violent* felony, as defined in subdivision (c) of Section
15 ~~1192.7~~ 667.5, shall be electronically recorded *in its entirety. This*
16 *provision applies to both adult and juvenile proceedings.*

17 (2) The requirement for the electronic recordation of a
18 custodial interrogation pursuant to this section shall not apply if
19 the person to be interrogated provides an electronically recorded
20 statement expressing that he or she will speak to the law
21 enforcement officer or officers only if the interrogation is not
22 electronically recorded ~~in its entirety~~ *recorded. Where electronic*

1 *recording of that statement is refused by the person to be*
2 *interrogated, then that refusal may be documented in writing.*

3 (3) ~~The state~~ *interrogating entity* shall not destroy or alter any
4 electronic recording made of a custodial interrogation of a
5 defendant until the time that a defendant's conviction for any
6 offense relating to the interrogation is final and all direct and
7 habeas corpus appeals are exhausted or the prosecution of the
8 defendant for that offense is barred by law. ~~The state~~
9 *interrogating entity* may make one or more true, accurate, and
10 complete copies of the electronic recording in a different format.

11 (b) Any law enforcement officer who conducts a custodial
12 interrogation of an individual described in subdivision (a) shall
13 be required to make an electronic recording of the interrogation
14 pursuant to subdivision (a), unless the law enforcement officer
15 can demonstrate, by a preponderance of the evidence, that the
16 electronic recording of the custodial interrogation was not
17 feasible for a specified reason, including, but not limited to,
18 either of the following:

19 (1) Access to equipment required to electronically record an
20 interrogation could not be obtained during the period of time that
21 the defendant could be lawfully detained.

22 (2) The failure to create an electronic recording of the entire
23 custodial interrogation was the result of a malfunction of the
24 recording device and obtaining a replacement device was not
25 feasible.

26 (c) If a court finds that a defendant was subjected to a
27 custodial interrogation in violation of subdivision (a), the court
28 shall, at the request of the defendant, provide the jury with a
29 ~~cautionary~~ instruction to be developed by the Judicial Council
30 *that advises the jury to view the statements made in that custodial*
31 *interrogation with caution.* ~~The Judicial Council shall review~~
32 ~~proposed jury instructions developed in other states where the~~
33 ~~admission of evidence of any statement or confession is the~~
34 ~~product of an unrecorded custodial interrogation. In addition, the~~
35 ~~judge at trial may, in his or her discretion, give any additional~~
36 ~~instructions he or she deems appropriate pertaining to the~~
37 ~~custodial interrogation statement, or modify the Judicial Council~~
38 ~~instructions as may be necessary depending on the facts of the~~
39 ~~case.~~

(d) For the purposes of this section, the following terms have the following meanings:

(1) “Custodial interrogation” means express questioning, or its functional equivalent, that is conducted at a place of detention that a law enforcement officer should know is reasonably likely to elicit an incriminating response from the defendant, under circumstances in which the defendant does not feel free to leave or terminate the questioning.

(2) “~~Electronic monitoring~~ recording” means an analog or digital recording that includes the audio representations of any interrogator and individual involved in a custodial interrogation, provided however, that a motion picture, videotape, analog, or digital recording that includes both audio and visual representations of any interrogator and individual involved in a custodial interrogation is also permitted. ~~The~~ *If video taping is used, the* camera shall be positioned to capture images of the suspect and the interrogators. Law enforcement officers are ~~recommended~~ *encouraged* to videotape the custodial interrogation of individuals suspected or accused of committing a ~~homicide~~ *homicide*.

(3) “Law enforcement officer” means any officer of the police, sheriff, highway patrol, or district attorney, and any peace officer included in Chapter 4.5 (commencing with Section 830).

(4) “Place of detention” means a police station, sheriff’s station, correctional facility, holding facility for prisoners, or any other law enforcement facility in which a person may be held in detention in connection with any criminal charge that has been, or may be, filed against the person. “Place of detention” does not include a law enforcement vehicle.

~~SEC. 4.~~

SEC. 3. If the Commission on State Mandates determines that this act contains costs mandated by the state, reimbursement to local agencies and school districts for those costs shall be made pursuant to Part 7 (commencing with Section 17500) of Division 4 of Title 2 of the Government Code.